

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

APPEARANCES:

FOR THE PLAINTIFFS:

MS. DIANNE ELDERKIN  
MS. BARBARA MULLIN  
MR. STEVEN MASLOWSKI  
MS. ANGELA VERRECCHIO  
MR. MATTHEW PEARSON  
Woodcock Washburn  
2929 Arch Street, 12th Floor  
Cira Centre  
Philadelphia, PA 19104

MR. RICHARD SAYLES  
MR. MARK STRACHAN  
Sayles Werbner  
1201 Elm Street  
4400 Renaissance Tower  
Dallas, TX 75270

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS: MS. SUSAN SIMMONS, CSR  
MS. JUDITH WERLINGER, CSR  
Official Court Reporters  
100 East Houston, Suite 125  
Marshall, TX 75670  
903/935-3868

(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

1  
2 APPEARANCES CONTINUED:

3  
4 FOR THE DEFENDANTS: MR. WILLIAM LEE  
5 MS. AMY WIGMORE  
6 MR. WILLIAM MCELWAIN  
7 Wilmer Cutler Pickering Hale  
8 and Dorr  
9 1875 Pennsylvania Avenue, N.W.  
10 Washington, DC 20006

11 MR. DAVID BECK  
12 Beck Redden & Secrest  
13 One Houston Center  
14 1221 McKinney Street  
15 Suite 4500  
16 Houston, TX 77010

17 \* \* \* \* \*

18  
19 P R O C E E D I N G S

20 COURTROOM DEPUTY: All rise.

21 THE COURT: Be seated.

22 Where's the note?

23 All right. This is a request to see a  
24 demonstrative exhibit. This Court's practice has always  
25 been to bring the jury in and then instruct them that  
this is a demonstrative exhibit, was not admitted into  
evidence, but they may look at -- you know, that they  
can look at it as long as they want to to make any notes  
that they wish.

1 Any objection from the Plaintiffs at this  
2 time?

3 MR. SAYLES: No objection, Your Honor.

4 THE COURT: From the Defendants?

5 MR. BECK: No objection.

6 THE COURT: Y'all about ready to go on  
7 the PowerPoint?

8 Put it up.

9 COURTROOM DEPUTY: They've gone to get  
10 the --

11 THE COURT: Court security officer?

12 COURTROOM DEPUTY: Yes.

13 THE COURT: Well, I thought everybody was  
14 here.

15 Bring them in.

16 COURT SECURITY OFFICER: All rise for the  
17 jury.

18 (Jury in.)

19 THE COURT: Y'all be seated, please.

20 Everybody be seated.

21 Ladies and Gentlemen, this exhibit was a  
22 demonstrative exhibit that was not offered into  
23 evidence. So I'm not in a -- it wasn't offered into  
24 evidence. You're entitled to look at it as long as you  
25 would like to look at it, but you can't ask any

1 questions nor anyone discuss it while we're present.

2 But I see that you didn't bring your notebooks. Do you  
3 need your notes to look at this exhibit?

4 Would you like your notebooks or not?

5 All right. Why don't y'all return -- why  
6 don't y'all return and get your notes, whatever you want  
7 to write with. Some want them and some don't. So those  
8 that want their notebooks, let's go do it.

9 If you will just indicate to me you have  
10 looked at it as long as you want to, that's how long  
11 we'll stay.

12 A JUROR: Could we get it adjusted  
13 slightly, Your Honor?

14 THE COURT: I don't know. Does it have  
15 any adjustment?

16 Dim the lights.

17 (Pause in proceedings.)

18 A JUROR: We're ready, Your Honor.

19 THE COURT: All right. Y'all may return  
20 to the jury room and continue deliberations according to  
21 my instructions.

22 COURT SECURITY OFFICER: All rise.

23 (Jury out.)

24 THE COURT: All right. Court's in recess  
25 pending further notification from the jury.

1 (Recess.)

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 The jury wants two exhibits, the Adair  
6 publication, DX361, Casali project and/or Casali  
7 deposition transcript. We do not know the Casali  
8 exhibit number, signed Donna Coleman, Foreperson.  
9 361 is easy.

10 What about the Casali? What are we  
11 talking about there?

12 MR. LEE: It's just a videotape.

13 MS. ELDERKIN: Yeah. I don't believe  
14 there's any Casali exhibit.

15 MR. LEE: Just testimony.

16 THE COURT: All right. We'll furnish  
17 them -- let's go ahead and send back 361, DX361.

18 You got the 361? Any question about what  
19 that is?

20 MR. LEE: That's it.

21 MS. ELDERKIN: That's right, Your Honor.

22 THE COURT: Why don't we go ahead -- is  
23 it all right to go ahead and send that back and just  
24 tell them I will be sending them another note with  
25 respect to the other request?

1 (Pause in proceedings.)

2 THE COURT: All right. With respect to  
3 the other request: There is not a Casali exhibit. The  
4 Court is unable to provide you with the Casali  
5 deposition transcript.

6 Any objection from the Plaintiff?

7 MR. SAYLES: No objection from the  
8 Plaintiff.

9 MR. LEE: No objection, Your Honor.

10 THE COURT: Why don't you type this up  
11 for me, and I'll sign it. Let her do this.

12 (Pause in proceedings.)

13 THE COURT: Does counsel have your copies  
14 of the Court's charge available?

15 Okay. While we were waiting here, we got  
16 another note.

17 The jury requests a complete detailed  
18 description of prior art from the Judge, Donna Coleman.

19 I would propose to bring the jury in, and  
20 I'll re-charge them starting with prior art starting on  
21 Page 11 and going down to damages at the top of Page 14.

22 MS. ELDERKIN: That's fine, Your Honor.

23 THE COURT: Defendant?

24 MR. LEE: No objection.

25 THE COURT: All right. Bring them in.

1 COURT SECURITY OFFICER: All rise for the  
2 jury.

3 (Jury in.)

4 THE COURT: Please be seated.

5 Ladies and Gentlemen, with respect to  
6 your request for a complete detailed description of the  
7 prior art from the Court, please listen to my  
8 instructions.

9 Prior art, generally speaking.

10 Under the patent laws, a person is  
11 entitled to a patent only if the invention claimed in  
12 the patent is new and non-obvious in light of what came  
13 before. That which came before the invention is  
14 referred to as prior art.

15 Abbott is relying on various items of  
16 prior art. Abbott must prove by clear and convincing  
17 evidence that these items are prior art. In order to do  
18 so, Abbott must prove that the item falls within one or  
19 more of the different categories of prior art recognized  
20 by the patent laws.

21 These categories include anything that  
22 was patented or described in a printed publication  
23 anywhere in the world before the inventor made the  
24 invention or more than one year before the application  
25 to which Centocor can claim priority was filed.

1                   With respect to anticipation, a person  
2 cannot obtain a patent on an invention if someone else  
3 has already made the same invention.

4                   In other words, the invention must be  
5 new. If an invention is not new, we say it was  
6 anticipated by the prior art. An invention that is  
7 anticipated by the prior art is not entitled to patent  
8 protection.

9                   A party challenging the validity of a  
10 patent must prove anticipation by clear and convincing  
11 standard -- by the clear and convincing standard.

12                  For a patent claim to be anticipated by  
13 the prior art, each and every limitation of the claim  
14 must be present within a single item of prior art and  
15 must be arranged or combined in the same way as in the  
16 claim.

17                  In analyzing this issue, do not focus on  
18 any features shown in the written description that are  
19 not included in the asserted claims. You may not find  
20 that the prior art anticipates a patent claim by  
21 combining two or more items of prior art.

22                  A printed publication or patent will not  
23 be anticipation unless it contains a description of the  
24 invention covered by the patent claims that is  
25 sufficiently detailed to teach a skilled person how to



1 make and use the invention without undue  
2 experimentation.

3           That means that a person skilled in the  
4 field of the invention reading the printed publication  
5 or patent would be able to make and use the invention  
6 using only an amount of experimentation that is  
7 appropriate for the complexity of the field of the  
8 invention and for the level of expertise and knowledge  
9 of persons skilled in that field.

10           In deciding whether or not a single item  
11 of prior art anticipates a patent claim, you should  
12 consider that which is expressly stated or present in  
13 the item of prior art and also that which is inherently  
14 present.

15           Something is inherent in an item of prior  
16 art if it is the natural result that flows from the  
17 disclosure in the prior art.

18           Inherency, however, may not be  
19 established by probabilities or possibilities. The mere  
20 fact that a certain thing may result from a given set of  
21 circumstances is not sufficient to show inherency.

22           If you find that Abbott has proved --  
23 pardon me.

24           If you find that Abbott has provided  
25 clear and convincing evidence that any of the claims

1 asserted against it are anticipated by prior art, then  
2 you must find that those claims are invalid.

3           With respect to printed publication,  
4 Abbott contends that the asserted claims are anticipated  
5 because of disclosures in prior printed publications.

6           Abbott contends that Claims 2, 3, 14, and  
7 15 of the '775 patent are anticipated by the Adair 1992  
8 European patent application and United States Patent No.  
9 6,090,382, the Salfeld patent.

10           Now, printed publications from anywhere  
11 in the world are prior art if the printed publications  
12 were published either before the inventor made the  
13 claimed invention or more than one year before the  
14 earliest application to which you find Centocor may  
15 claim priority.

16           If a printed publication was published  
17 more than one year before the application to which the  
18 Plaintiff can claim priority was filed, then that  
19 publication will be prior art regardless of the date of  
20 the invention for the patent claims. The date of  
21 invention is irrelevant to this category of prior art.

22           A printed publication will not be in  
23 anticipation unless it contained a description of the  
24 invention covered by the patent claims that is  
25 sufficiently detailed to teach a person of ordinary

1 skill in the art how to make and use the invention  
2 without undue experimentation.

3 That means that a person of ordinary  
4 skill in the field of the invention reading the printed  
5 publication would be able to make and use the invention  
6 using only an amount of experimentation that is  
7 appropriate for the complexity of the field of the  
8 invention and for the level of expertise and knowledge  
9 of persons of ordinary skill in the field.

10 I'll ask at this time that you -- that's  
11 the end of my instructions on prior art, and I'll ask  
12 that you return to the jury room and continue your  
13 deliberations.

14 And, Mr. Potts, this is in response to  
15 one of the questions you had previously...

16 Follow Mr. Potts, if you will.

17 COURT SECURITY OFFICER: All rise.

18 (Jury out.)

19 THE COURT: Anything from the Plaintiff?

20 MS. ELDERKIN: Nothing, Your Honor.

21 THE COURT: Anything from the Defendant?

22 MR. LEE: Nothing, Your Honor.

23 THE COURT: Okay. All right. Court's in  
24 recess pending receipt of a verdict or further  
25 communication, I should say.

1 (Recess.)

2 COURT SECURITY OFFICER: All rise for the  
3 jury.

4 (Jury in.)

5 THE COURT: Please be seated.

6 Ms. Coleman, you reached a verdict?

7 FOREPERSON: Yes, sir, we have.

8 THE COURT: If you'll hand it to  
9 Mr. Potts, and then he'll hand it up to me.

10 FOREPERSON: (Complies.)

11 THE COURT: Thank you.

12 All right, Ladies and Gentlemen. I'll  
13 read these answers. I'll just read the question number  
14 and your -- and the answers, and then I'll ask -- so  
15 that the record will be clear, ask if this represents  
16 your verdict, to stand after I've read all these.

17 Question No. 1: As to all claims, yes.

18 Question No. 2: As to all claims, no.

19 Question No. 3: Yes.

20 Question No. 4: For lost profits,  
21 \$1,168,466,000.

22 As a reasonable royalty, \$504,128,000,  
23 signed by Ms. Coleman.

24 If this represents your verdict, please  
25 stand at this time, the jurors.

1 (All jurors stand.)

2 THE COURT: All right. The record will  
3 reflect that all jurors are standing.

4 Please be seated.

5 Ladies and Gentlemen, this completes your  
6 service. I know these cases are not easy. There's  
7 always a winner and a loser. And the lawyers would like  
8 for me to quit talking, but there's a few things I need  
9 to say to you.

10 I have continuously told you throughout  
11 this trial not to talk to anybody about it. I am now  
12 reversing that instruction, and you can talk to anybody  
13 about anything you want to talk to, or you can refuse to  
14 talk to anybody.

15 Now, the rule in this district, since --  
16 at least since 1968, since that's how long I've been in  
17 this district, is that the lawyers are prohibited from  
18 contacting you about your verdict or anyone on their  
19 behalf.

20 However, let me assure you, if there's  
21 something that you want to say to one of these lawyers,  
22 if you see them out here as you leave, the least  
23 indication by you that you'd like to talk to them, they  
24 would be happy to talk to you, if you want to talk to  
25 them.

1                   But if you don't want to talk to them,  
2 you just don't indicate that.

3                   And I will tell you that even though  
4 there's a loser in the case, you've seen the best --  
5 I've been on the bench for 10 years. I've tried  
6 lawsuits in this courtroom since 19 -- actually, the  
7 first of 1969, I believe. You will never see a better  
8 group of lawyers, Plaintiffs and Defendants, than you've  
9 seen.

10                  That's my final instructions to you. You  
11 did your part as ordinary citizens, and you've done your  
12 part to protect and defend the Constitution of the  
13 United States.

14                  I dismiss you at this time with the  
15 thanks of the Court. You may leave the courtroom.

16                  COURT SECURITY OFFICER: All rise for the  
17 jury.

18                  (Jury out.)

19                  THE COURT: Anything from the Plaintiff  
20 at this time?

21                  MR. SAYLES: We ask for entry of  
22 judgment. Nothing else, though.

23                  MR. LEE: Your Honor, we still have a  
24 couple of equitable issues to try before judgment can be  
25 entered, I think.

1                   THE COURT: Well, we'll-- have y'all --  
2 everyone be seated for a minute.

3                   The equitable issues, have y'all  
4 discussed among yourselves how much time you're going to  
5 need or anything like that?

6                   MR. LEE: I don't think we have. I don't  
7 think it will take more than a day.

8                   THE COURT: Well, why don't y'all discuss  
9 among yourselves how long you're going to need and  
10 discuss, in the month of July, when you would like to do  
11 it.

12                   I have -- it appears that the jury  
13 docket, once I try the case I start in the morning, once  
14 I finish it next week, it looks like we've got about  
15 four jury trials or five. I don't know how many. We've  
16 had several, though. Some of them have gone away. So  
17 July might be a good time.

18                   If y'all feel like visiting today or get  
19 back to the Court pretty quickly this week as to when  
20 you think you can do it, then I can almost do it any day  
21 in July just about. You can talk with -- Ms. Dupree  
22 probably has it, if you want to talk to her.

23                   I complimented you on the -- off the  
24 record in my chambers and I told the jury and I feel  
25 those present that it is a real pleasure for a good

1 judge to sit up here and watch this type of talent in  
2 the courtroom.

3 It's like the finals of Wimbledon. You  
4 know, it's like a tennis match. It's just one good shot  
5 after another one.

6 Thank you very much. Stand in recess.

7 (Court adjourned.)

8 \* \* \* \* \*

9 CERTIFICATION

10

11 I HEREBY CERTIFY that the foregoing is a  
12 true and correct transcript from the stenographic notes  
13 of the proceedings in the above-entitled matter to the  
14 best of my ability.

15

16

17

18 /s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
19 Official Court Reporter  
State of Texas No.: 267  
20 Expiration Date: 12/31/10

\_\_\_\_\_  
Date

21

22

23 /s/\_\_\_\_\_  
JUDITH WERLINGER, CSR  
24 Deputy Official Court Reporter  
State of Texas No.: 731  
25 Expiration Date 12/31/10

\_\_\_\_\_  
Date